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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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9 UNITED STATES OF AMERICA,  
10 Plaintiff,

11 v.  
12 MAURILLO TREJO,  
13 Defendant.

NO. CR-09-6003-RHW

**ORDER GRANTING  
DEFENDANT'S MOTION FOR  
RECONSIDERATION**

14 Before the Court is Defendant's Motion for Reconsideration (Ct. Rec. 32).  
15 A hearing on the motion was held on September 24, 2009, in Richland,  
16 Washington. Defendant was present and represented by John Crowley.

17 On August 24, 2009, the Court denied Defendant's Motion to Suppress,  
18 ruling that although under *Arizona v. Gant*, Defendant's constitutional rights were  
19 violated by the search of his vehicle incident to arrest, the good-faith exception to  
20 the exclusionary rule applied. The Court also ruled that the search was not  
21 justified as an inventory search. On that same day, the Ninth Circuit handed down  
22 *United States v. Gonzalez*, \_\_ F.3d. \_\_, 2009 WL 2581738 (9<sup>th</sup> Cir. Aug. 24, 2009).  
23 The Circuit applied the exclusionary rule to the automobile search incident to  
24 arrest.

25 The Government concedes that *Gonzalez* controls as it presently exists. As  
26 such, the Court grants Defendant's Motion for Reconsideration. The Court finds  
27 that the good-faith exception does not apply to the unconstitutional vehicle search  
28 incident to arrest, pursuant to *Gonzalez*.

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At the hearing, the Government orally moved to stay the case to permit it to appeal the Court’s ruling granting Defendant’s Motion to Suppress. Defendant did not object to the stay. The Court granted the motion.

**Accordingly, IT IS HEREBY ORDERED:**

1. Defendant's Motion for Reconsideration (Ct. Rec. 32) is **GRANTED**.
  2. The Government's oral Motion to Stay the case pending appeal is

## **GRANTED.**

3. The jury trial set for **October 5, 2009**, is stricken.

4. The Government shall notify the Court when the Ninth Circuit has ruled on its appeal.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this order and to provide copies to counsel.

**DATED** this 25<sup>th</sup> day of September, 2009.

s/Robert H. Whaley

**ROBERT H. WHALEY**  
United States District Judge

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